

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

**Malloy Properties Partnership
No. 2**, a California Limited
Partnership;
Don G. Price, in individual and
representative capacity as trustee of
The Don G. Price Trust Dated March
20, 2001 as amended; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of:** American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of Malloy Properties Partnership No. 2, a California Limited Partnership; Don G. Price, in individual and representative capacity as trustee of The Don G. Price Trust Dated March 20, 2001 as amended; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially

1 equipped van.

2 2. Defendant Malloy Properties Partnership No. 2 owned the real property
3 located at or about 1482 W. El Camino Real, Mountain View, California, in
4 April 2019 and May 2019.

5 3. Defendant Malloy Properties Partnership No. 2 owns the real property
6 located at or about 1482 W. El Camino Real, Mountain View, California,
7 currently.

8 4. Defendant Don G. Price, in individual and representative capacity as
9 trustee of The Don G. Price Trust Dated March 20, 2001 as amended, owned
10 the real property located at or about 1482 W. El Camino Real, Mountain View,
11 California, in April 2019 and May 2019.

12 5. Defendant Don G. Price, in individual and representative capacity as
13 trustee of The Don G. Price Trust Dated March 20, 2001 as amended, owns
14 the real property located at or about 1482 W. El Camino Real, Mountain View,
15 California, currently.

16 6. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein,
21 including Does 1 through 10, inclusive, is responsible in some capacity for the
22 events herein alleged, or is a necessary party for obtaining appropriate relief.
23 Plaintiff will seek leave to amend when the true names, capacities,
24 connections, and responsibilities of the Defendants and Does 1 through 10,
25 inclusive, are ascertained.

26
27 **JURISDICTION & VENUE:**

28 7. The Court has subject matter jurisdiction over the action pursuant to 28

1 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 8. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 10. Plaintiff went to the property to eat at Tommy Thai ("Restaurant") in
13 April 2019 (twice) and May 2019 with the intention to avail himself of its
14 goods, motivated in part to determine if the defendants comply with the
15 disability access laws.

16 11. The Restaurant is a facility open to the public, a place of public
17 accommodation, and a business establishment.

18 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
19 to provide accessible parking in conformance with the ADA Standards as it
20 relates to wheelchair users like the plaintiff.

21 13. On information and belief the defendants currently fail to provide
22 accessible parking.

23 14. These barriers relate to and impact the plaintiff's disability. Plaintiff
24 personally encountered these barriers.

25 15. By failing to provide accessible facilities, the defendants denied the
26 plaintiff full and equal access.

27 16. The lack of accessible facilities created difficulty and discomfort for the
28 Plaintiff.

1 17. The defendants have failed to maintain in working and useable
2 conditions those features required to provide ready access to persons with
3 disabilities.

4 18. The barriers identified above are easily removed without much
5 difficulty or expense. They are the types of barriers identified by the
6 Department of Justice as presumably readily achievable to remove and, in fact,
7 these barriers are readily achievable to remove. Moreover, there are numerous
8 alternative accommodations that could be made to provide a greater level of
9 access if complete removal were not achievable.

10 19. Plaintiff will return to the Restaurant to avail himself of its goods and to
11 determine compliance with the disability access laws once it is represented to
12 him that the Restaurant and its facilities are accessible. Plaintiff is currently
13 deterred from doing so because of his knowledge of the existing barriers and
14 his uncertainty about the existence of yet other barriers on the site. If the
15 barriers are not removed, the plaintiff will face unlawful and discriminatory
16 barriers again.

17 20. Given the obvious and blatant nature of the barriers and violations
18 alleged herein, the plaintiff alleges, on information and belief, that there are
19 other violations and barriers on the site that relate to his disability. Plaintiff will
20 amend the complaint, to provide proper notice regarding the scope of this
21 lawsuit, once he conducts a site inspection. However, please be on notice that
22 the plaintiff seeks to have all barriers related to his disability remedied. See
23 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
24 encounters one barrier at a site, he can sue to have all barriers that relate to his
25 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

21. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

22. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 23. When a business provides parking for its customers, it must provide
2 accessible parking.

3 24. Here, accessible parking has not been provided.

4 25. The Safe Harbor provisions of the 2010 Standards are not applicable
5 here because the conditions challenged in this lawsuit do not comply with the
6 1991 Standards.

7 26. A public accommodation must maintain in operable working condition
8 those features of its facilities and equipment that are required to be readily
9 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 27. Here, the failure to ensure that the accessible facilities were available
11 and ready to be used by the plaintiff is a violation of the law.

12
13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
14 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
15 Code § 51-53.)

16 28. Plaintiff repleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
19 that persons with disabilities are entitled to full and equal accommodations,
20 advantages, facilities, privileges, or services in all business establishment of
21 every kind whatsoever within the jurisdiction of the State of California. Cal.
22 Civ. Code § 51(b).

23 29. The Unruh Act provides that a violation of the ADA is a violation of the
24 Unruh Act. Cal. Civ. Code, § 51(f).

25 30. Defendants’ acts and omissions, as herein alleged, have violated the
26 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
27 rights to full and equal use of the accommodations, advantages, facilities,
28 privileges, or services offered.

1 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
2 discomfort or embarrassment for the plaintiff, the defendants are also each
3 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
4 (c).)

5 32. Although the plaintiff was markedly frustrated by facing discriminatory
6 barriers, even manifesting itself with minor and fleeting physical symptoms,
7 the plaintiff does not value this very modest physical personal injury greater
8 than the amount of the statutory damages.

9
10 **PRAYER:**

11 Wherefore, Plaintiff prays that this Court award damages and provide
12 relief as follows:

13 1. For injunctive relief, compelling Defendants to comply with the
14 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
15 plaintiff is not invoking section 55 of the California Civil Code and is not
16 seeking injunctive relief under the Disabled Persons Act at all.

17 2. Damages under the Unruh Civil Rights Act, which provides for actual
18 damages and a statutory minimum of \$4,000 for each offense.

19 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
20 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

21
22 Dated: December 5, 2019

CENTER FOR DISABILITY ACCESS

23
24 By:



25
26 Amanda Seabock, Esq.
Attorney for plaintiff